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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 RONNIE DEION HUNTLEY,

11 Plaintiff,

12 v.

13 COWLITZ COUNTY POLICE  
14 DEPARTMENT and COWLITZ  
COUNTY JAIL,

15 Defendants.

CASE NO. 3:18-cv-05608-BHS-JRC

ORDER TO SHOW CAUSE OR  
AMEND COMPLAINT

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17 Plaintiff Ronnie Deion Huntley, proceeding *pro se*, filed this civil rights complaint under  
18 42 U.S.C. § 1983. He alleges he was denied the right to a fair trial when jail staff wrongly told  
19 newssources that he had been arrested for homicide, thereby outraging his peers such that he  
20 could not enjoy an unbiased jury. However, his named defendants cannot be held liable pursuant  
21 to § 1983 and a decision in his favor would necessarily imply the invalidity of his underlying  
22 conviction. Having reviewed and screened plaintiff's complaint under 28 U.S.C. § 1915A, the  
23 Court declines to serve plaintiff's complaint because plaintiff has yet to plead sufficient facts to  
24 demonstrate that defendants violated his constitutional rights. However, the Court provides

1 plaintiff leave to file an amended pleading by September 28, 2018, to cure the deficiencies  
2 identified herein.

3 In addition, because it is unclear whether plaintiff will be able to cure the deficiencies  
4 identified herein, the Court declines to rule on his application to proceed *in forma pauperis* (Dkt.  
5 2) until plaintiff has filed his amended complaint.

## 6 BACKGROUND

7 Plaintiff initially filed this case in the Eastern District of Washington in May of 2018.  
8 Dkt. 1. However, the Eastern District determined that all the defendants resided in the Western  
9 District of Washington, and so transferred the case to this Court. Dkts. 7, 8. In his complaint,  
10 plaintiff alleges that he was arrested for unlawful imprisonment, but somebody at the Cowlitz  
11 County Jail told newssources he had been arrested for three counts of homicide. Dkt. 1, p. 5. He  
12 alleges that this “defamation” caused both him and his family to receive threats and, ultimately,  
13 the community was poisoned against him such that he could not receive a fair trial. *Id.*

## 14 DISCUSSION

### 15 I. *Heck v. Humphrey* Bar

16 A civil rights complaint under § 1983 cannot proceed when “a judgment in favor of the  
17 plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the  
18 complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence  
19 has already been invalidated.” *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). The § 1983 action  
20 “is barred (absent prior invalidation) – no matter the relief sought (damages or equitable relief),  
21 no matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison  
22 proceedings) – if success in that action would necessarily demonstrate the invalidity of  
23 confinement or its duration.” *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005). To obtain federal  
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1 judicial review of a state conviction or sentence, a party must file a petition for writ of habeas  
2 corpus pursuant to 28 U.S.C. § 2254 and must first exhaust his state judicial remedies. *See*  
3 *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

4 Here, plaintiff stated his “right to a fair impartial trial without prejudice” was violated  
5 because of the alleged actions taken by defendants. Dkt. 1, p. 5. However, a finding that his right  
6 to an impartial jury was denied would necessarily invalidate his underlying conviction because a  
7 conviction by a biased jury is unconstitutional. A § 1983 claim is not the appropriate vehicle to  
8 challenge the validity of a conviction. Rather, plaintiff must first exhaust his state court remedies  
9 and, if the state courts deny him relief, have his conviction invalidated through a petition for a  
10 writ of habeas corpus. Because there is no indication plaintiff has invalidated his conviction, a  
11 decision in plaintiff’s favor would necessarily imply the invalidity of the underlying conviction  
12 and is therefore improper. Plaintiff has thus failed to state a claim on which relief can be granted.  
13 As such, the Court declines to serve plaintiff’s complaint.

## 14 **II. Improper Defendants**

15 Additionally, 42 U.S.C. § 1983 applies to the actions of “persons” acting under color of  
16 state law. This definition includes municipalities, such as counties. *Monell v. New York City*  
17 *Dept. of Social Services*, 436 U.S. 658, 690 (1978). However, courts have held that to bring an  
18 appropriate § 1983 action, plaintiff “must name the county or city itself as party to the action,  
19 and not the particular municipal department or facility where the alleged violation occurred.”  
20 *Osborne v. Vancouver Police*, 2017 WL 1294573 at \*9 (W.D. Wash. 2017); *see also Vance v.*  
21 *Santa Clara Co.*, 928 F. Supp. 993, 996 (N.D. Cal. 1996); *Pressley v. San Diego Sheriff Central*

1 *County Jail*, 2017 WL 4960221 at \*3 (S.D. Cal. 2017); *Greenfield v. Brenner*, 2006 WL 776772  
2 at \*5 (E.D. Wash. 2006).

3 Further, a county may only be held liable if its policies are the “moving force [behind]  
4 the constitutional violation.” *City of Canton v. Harris*, 489 U.S. 378, 389 (1989) (quoting  
5 *Monell*, 436 U.S. at 694). To recover, plaintiff must show that county employees or agents acted  
6 through an official custom or policy that permits violation of plaintiff’s civil rights, or that the  
7 entity ratified the unlawful conduct. *See Monell*, 436 U.S. at 690-91.

8 Here, plaintiff has only named the Cowlitz County Police Department and Cowlitz  
9 County Jail as defendants in his action. However, because these are departments within the  
10 county, and not the county itself, plaintiff has not named a “person” for purposes of § 1983. To  
11 state a claim for relief under § 1983, plaintiff must name Cowlitz County itself, and must show  
12 how the policies and practices of Cowlitz County were the driving force behind his alleged  
13 violation. As such, he has not yet stated a claim for which relief can be granted and the Court  
14 declines to serve his complaint.

### 15 **III. Personal Participation**

16 Finally, plaintiff alleges somebody at the Cowlitz County Jail improperly told  
17 newssources that he was arrested for homicide, not the unlawful imprisonment he was actually  
18 arrested for. Dkt. 1, p.5. To state a claim under 42 U.S.C. § 1983, plaintiff must allege facts  
19 showing how a defendant caused or personally participated in causing the harm alleged in the  
20 complaint. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold*, 637 F.2d at 1355. A  
21 person subjects another to a deprivation of a constitutional right when committing an affirmative  
22 act, participating in another’s affirmative act, or failing to perform an act which is legally  
23 required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Sweeping conclusory allegations  
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1 against an official are insufficient to state a claim for relief. *Leer*, 844 F.2d at 633. Further, a §  
2 1983 suit cannot be based on vicarious liability alone, but must allege the defendant's own  
3 conduct violated the plaintiff's civil rights. *City of Canton v. Harris*, 489 U.S. 378, 385-90  
4 (1989).

5 Here, plaintiff has named no individuals who allegedly violated his constitutional rights,  
6 nor has he described how they did so. Rather, he has stated simply "the jail reported to the local  
7 news . . . that I was really arrested for 3 counts of homicide . . . ." Dkt. 1, p. 5. As such, he has  
8 not yet alleged personal participation and so has not yet stated a claim for which relief can be  
9 granted. As such, the Court declines to serve his complaint.

#### 10 **IV. Instructions to Plaintiff and the Clerk**

11 Due to the deficiencies described above, the Court will not serve plaintiff's complaint.

12 Since success on plaintiff's claims would necessarily invalidate his underlying  
13 conviction, plaintiff must first invalidate his conviction by filing a petition for writ of habeas  
14 corpus pursuant to 28 U.S.C. § 2254 and must first exhaust his state judicial remedies. *See*  
15 *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Failure to do so will bar this Court from hearing  
16 plaintiff's § 1983 claims. *Wilkinson*, 544 U.S. at 81-82.

17 Further, if plaintiff intends to pursue a § 1983 civil rights action in this Court, he must  
18 file an amended complaint and within the amended complaint, he must write a short, plain  
19 statement telling the Court: (1) the constitutional right plaintiff believes was violated; (2) *the*  
20 *name or names of the person or persons who violated the right*; (3) *exactly what each individual*  
21 *or entity did or failed to do*; (4) how the action or inaction of each individual or entity is  
22 connected to the violation of plaintiff's constitutional rights; and (5) what specific injury plaintiff  
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1 suffered because of the individuals' conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377  
2 (1976).

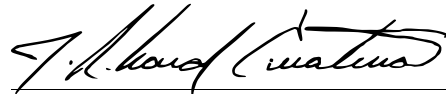
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4 Plaintiff shall present the amended complaint on the form provided by the Court. The  
5 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original  
6 and not a copy, it should contain the same case number, and it may not incorporate any part of  
7 the original complaint by reference. The amended complaint will act as a complete substitute for  
8 the original complaint, and not as a supplement. An amended complaint supersedes the original  
9 complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on*  
10 *other grounds, Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012). Therefore, the amended  
11 complaint must be complete in itself and all facts and causes of action alleged in the original  
12 complaint that are not alleged in the amended complaint are waived. *Forsyth*, 114 F.3d at 1474.  
13 The Court will screen the amended complaint to determine whether it contains factual allegations  
14 linking each defendant to the alleged violations of plaintiff's rights. The Court will not authorize  
15 service of the amended complaint on any defendant who is not specifically linked to a violation  
16 of plaintiff's rights.

17 If plaintiff fails to file an amended complaint or fails to adequately address the issues  
18 raised herein **on or before September 28, 2018**, the undersigned will recommend dismissal of  
19 this action pursuant to 28 U.S.C. § 1915.

20 The Court declines to rule on plaintiff's application to proceed *in forma pauperis* until  
21 plaintiff has filed his amended complaint.  
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1 The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983  
2 civil rights complaint and for service. The Clerk is further directed to send copies of this order  
3 and Pro Se Instruction Sheet to plaintiff.

4 Dated this 28th day of August, 2018.

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8 J. Richard Creatura  
9 United States Magistrate Judge  
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